Supreme Court of the United States.

HOLDANE & COMPANY AND JAMES JEFFRIES, APPELLANTS,
vs.
R. B. SUMNER ET AL., APPELLEES.
No. 218.

ABSTRACT AND STATEMENT OF THE CASE.

This is an appeal from a decree of the circuit court of the United States for the district of Louisiana, subjecting a fund of $11,867.07, deposited in the Bank of America, in New Orleans, to the credit of R. Wells, as syndic of the creditors of the Belleville Iron-Works Company, to the lien and privilege of the complainants, as lessors, and deciding that the said fund of right belonged to the complainants, and should be paid to them, as lessors of the Belleville Iron-Works.

Record, p. 202 *et seq.*

FACTS FROM THE RECORD, BY DATES.

June 20, 1856, complainants, Sumner *et al.*, leased the Belleville Iron-Works unto Cook and Fallon, from January 1, 1856, to December 31, 1865, at a price not less than $7,000 per annum. The lease is by authentic act.

Rec., pp. 4, 5, 6, 7, 8.

April 1, 1857, Cook and Fallon assigned this lease, with the consent of the lessors, to the Belleville Iron-Works

Company, a corporation established March 21, 1857, under the laws of Louisiana.

Rec., p. 8. Charter, p. 166.

December 10, 1858, James Jeffries enters his first suit to recover from the Bellville Iron Company $3,202.44, interest and costs, in fourth district court of New Orleans, No. 12,851, being the first instalment due by defendant.

Record, p. 106.

December 20, 1858, the Belleville Iron-Works Company became insolvent, attempted to avail itself of the insolvent laws of Louisiana, and tendered to the Fourth district court of New Orleans, No. 12,890, a surrender of all its property, *as though it were a natural person.*

Rec., p. 126, 127, *et sequentes.*

The usual order for a stay of proceedings, &c., was entered on the same day.

January 17, 1859, Jeffries' suit, No. 12,851, came up for trial, when the court ordered the case to be cumulated with the insolvent proceedings of the Belleville Iron-Works Company. Plaintiff excepted, and was overruled, and he then reserved his bill of exceptions. Afterwards he sought relief from this order, both by a rule to show cause (Rec., p. 108) and an independent suit, (Rec., p. 52,) numbered 12,939, in the same court.

January 18, 1859, in the same Fourth district court of New Orleans James Jeffries enters his second suit, petitioning for the annulment and vacation of the order (judgment) staying all proceedings against the person and property of the Belleville Iron-Works Company, and for judgment for $3,262.86, exchange, interest, costs of protest, &c.

Rec. pp. 52, 53. Suit No. 12,939.

May 2, 1859, on exceptions filed by the syndic of the insolvent corporation, judgment was rendered by the same court, (4 D. C. of N. O.,) cumulating this suit of Jeffries with the insolvent proceedings of the Belleville Iron-Works Company, rendered 2d, and signed 6th May, 1859.

Rec., p. 56, at top.

May 10, 1859, appeal from this judgment applied for and granted (Rec., p. 56) in both suits, (Nos. 12,851, and 12,939.)

Rec., p. 114.

January 23, 1860. The order to cumulate these two suits with the insolvent proceedings was reversed by supreme court of Louisiana, (Rec., p. 123,) and both suits remanded, to be proceeded in according to law.

January 26, 1860, Jeffries filed a supplemental petition in No. 12,939, (Rec., p. 59,) and went to trial on the merits, March 19, 1860. (Rec., p. 63.) Judgment was rendered March 23, 1860. (Rec., p. 89.) Jeffries issued his *fi. fa.*, with garnishment-process annexed; made the Bank of America, Richard Wells, and F. W. C. Cook, garnishees, (Rec., p. 94,) and A. Converse, garnishee, on April 28, 1860.

Rec., p. 97.

On the same day, to wit, January 26, 1860, Jeffries entered his third suit in the United States circuit court to recover the third instalment of their claim, No. 3,226 of the docket. (Rec., page 186 *et seq.*) The proceedings are quite similar to those in Nos. 12,851 and 12,939 of the Fourth D. C. docket.

May 3, 1860. Bank of America answering, admits having $11,867.07 on deposit to the credit of R. Wells, syndic of the Belleville Iron-Works Co., (Rec., p. 98.) See Wells'

answer on page 100. Converse admits buying the lease for $1,000 *per annum*, payable quarterly.

June 18, 1860, Jeffries rules the garnishees in Fourth district court, No. 12,939, for judgment against them for the amount of his judgment against the Belleville Iron-Works Company. (Rec., p. 101.) The original lessors, Sumner, Valette, Hughes, *et al.*, were made parties. (Rec., p. 101.) The rule was dismissed on an exception that the insolvent proceedings, Belleville Iron-Works Company *vs.* Their Creditors, were still in full force, and could only be annulled by "a regular suit for that purpose in the ordinary form of judicial proceedings."

Rec., pp. 102, 103.

June 28, 1860, Jeffries took his appeal from this judgment, (Rec., p. 103,) and the supreme court again reversed, remanding the case, and deciding all points in favor of Jeffries.

See the opinion and decree, Rec., pp. 196 to 201 inclusive.

See 18 Louis'a An. Rep., 685.

After an ineffectual attempt at a rehearing, the co-lessors, Sumner, Hughes, *et al.*, filed their bill in equity in the United States circuit court, enjoining Jeffries "from proceeding by way of garnishment or other legal process, or motion auxiliary to such process, to collect and demand from the Bank of America the said fund in said bank to the credit of Richard Wells, syndic, and from making any claim or pretension thereto, and that, finally, it be decreed that the Bank of America pay over said fund to your orators," &c.

Rec., page 4.

Somewhat contemporaneously with the institution of these proceedings of Jeffries, Holdane & Co. sued the Belle-

ville Iron-Works Company in the United States circuit court of Louisiana, (Nos. 3,049, Rec., p. 15, and 3,090, Rec., p. 37,) to recover the amount of their claim, $1,403+$1,429.48+$1,455.95 = $4,288.43. (See Rec., p. 152.) These plaintiffs obtained judgments, issued execution with garnishee-process, and elicited the same answers from garnishees. (Rec., p. 20, *et seq.*) They were made parties to the bill in equity, were perpetually enjoined from asserting any claim to the fund, and finally decreed to pay (with Jeffries) the costs of suit.

Rec., p. 202.

Before this time, Holdane & Co. had moved for judgment against the garnishees, and the then circuit judge had suspended action thereon, for reasons set forth on page 33 of the record.

The questions involved in the case are—

1. Whether, under the law of Louisiana, the lessors of the Belleville Iron Works had a lien and privilege upon the money found on deposit in the Bank of America, and derived from the sale of movable effects belonging to the company made by an assignee of creditors, in proceedings which the State courts of Louisiana had pronounced to have been null and void *ab initio?*

2. Who was the owner of the fund in the bank?

3. Whether a decree can be made constituting the complainants creditors of the Belleville Iron Works, in proceedings to which the latter are not parties?

4. Whether there was any legal proof that the complainants were creditors of the Belleville Iron Works?

5. Whether, under the laws of Louisiana, if the complainants ever had a lien and privilege on the movable property of the Belleville Iron Works, they had not lost it by neglecting to enforce it during the fifteen days succeeding the removal of said property from the works?

6. Whether the complainants were not by the terms of the lease partners of the Belleville Iron-Works Company, and as such incapable in law of asserting a lien and privilege upon the movable effects of the Company adverse to the rights of creditors?

ASSIGNMENT OF ERRORS.

The decree of the circuit court is alleged to be erroneous in the following particulars:

First. In decreeing the fund in the Bank of America to be subject to a lien and privilege in favor of complainants, as the lessors of the Belleville Iron Works.

Second. In decreeing that the said fund of right belonged to the ~~Belleville Iron Works~~ complainants.

Third. In decreeing virtually and in effect that the Belleville Iron Works were indebted as lessees to complainants, when in point of fact the said iron works were not a party.

Fourth. In decreeing the complainants to be creditors of the Belleville Iron Works, when the complainants had never recovered any judgment against the works, and had furnished no legal proof that they were creditors.

Fifth. In decreeing that complainants were creditors and entitled to a lien and privilege on the movable effects of the Belleville Iron Works, when the evidence shows that the complainants were partners of the Belleville Iron-Works Company.

ARGUMENT.

The two opinions and decrees of the supreme court of Louisiana in the case of Jeffries are too clear to admit of doubt or contestation. They decide that all the proceedings in the case of the Belleville Iron-Works Company *vs.* Their Creditors, No. 12,890 of the docket of the fourth district court of New Orleans, are void from beginning to end;

and the opinion in 18 Louisiana Annual Rep., on p. 691, reads as follows:

"We have also examined the question as to the legal effect of the same judgment (23d March, 1860, supreme court) upon the *anterior proceedings* in the surrender, and we have concluded, after the most mature deliberation, that the judgments homologating (approving) tableaux of distribution were not binding on plaintiff, so as to prevent him from seizing money and effects yet in the hands of the so-called syndic, or other garnishees, such money and effects being considered as the property of said company after the judgment setting aside the surrender. *Sublato fundamento cadit opus.*"

With these decisions before us, we have a complete final judgment in our favor on all the points involved in the case and fatal in all respects to the hopes of the privileged creditors. Hence this bill in equity. The question which the lessors, Sumner *et al.*, asked themselves when the decree of the supreme court of Louisiana was rendered in December, 1866, and February, 1867, remanding the case for further proceedings according to law, was, How escape from the effects of the decrees? The expedient they resorted to was successful in the lower court, where the effect of the judgments of the supreme court of Louisiana was destroyed, although the national courts have no jurisdiction to review and reverse the judgments of the highest courts of the State, except in the few cases pointed out in the 25th section of the judiciary act and its amendment.

1 S. L., 72; 14 S. L., 385.

In 1860, the Associate Justice of the Supreme Court holding sessions in Louisiana declines to decide, because he has good cause to believe that the rights of a citizen of another State will be justly dealt with by the Louisiana

courts, and prefers to wait to see how they will decide, and to be governed by their decision if not injurious to the rights of the suitor plaintiff in the national courts.

In 1871, the same national court in Louisiana, after the supreme court of that State had given judgment in full in favor of the suitor, takes away the *effectus* and *fructus* of his execution, and gives the same to the parties defeated in the State court.

If, after long weary years of litigation in the State tribunals, citizens of other States are to be compelled *by the same antagonists* to fight their battles over again in a national court, to be enjoined from executing their judgments in the State courts, and finally to have the fruits of their executions taken away from them—then their condition is hard indeed.

And on the merits of the case, if the judgments of the supreme court of Louisiana be really judgments and entitled to respect, Sumner *et al.*, co-lessors of the foundry, have no right, title, or interest in and to the movables, which they say were *originally* affected with their landlord's privilege, or to the moneys produced by the sale of the said movables.

It is clear that the co-lessors are not *owners* of the movables or of the fund, for the money and effects are expressly declared to be "*the property of said company.*"

If not owners—which, by the way, they do not claim to be—then Sumner *et al.* say they are creditors, with a landlord's privilege or lien.

Articles 2,675 and 2,679, Louisiana Code, 1825, which read as follows:

CIVIL CODE OF LOUISIANA.

Art. 2,675.—The lessor has, for the payment of his rent and other obligations of the lease, a right of pledge on the

movable effects of the lessee which are found on the property leased.

In the case of predial estates, this right embraces everything that serves for the labors of the farm, the furniture of the lessee's house, and the fruits produced during the lease of the land; and in the case of houses and other edifices it includes the furniture of the lessee, and the merchandise contained in the house or apartment, if it be a store or shop.

Art. 2,679.—In the exercise of this right, the lessor may seize the objects which are subject to it, before the lessee takes them away or within fifteen days after they are taken away, if they continue to be the property of the lessee and can be identified.

"If it can be supposed, as it should not, that they were once creditors with the landlord's privilege, yet they assented to the removal of the effects found on the place leased, and to their sale under a *void* order of court, and they claim, not the movables themselves, which they themselves might have taken *ex mero motu*, if lessors and not partners, and retained until they were paid," (see the quoted article,) but the proceeds thereof in money. This claim for the proceeds in money, they say, has been recognized by the Fourth district court of New Orleans; that the sale was made by the sheriff of Orleans; that the syndic filed a provisional tableau, which was homologated, and that the said homologation is a conclusive judgment and *res judicata*, and that the proceeds of the sale passed into the hands of the officers of the court, and there remains, *in the custody of the law*, &c. (See their bill on page 2 of the record.) All of which allegations, from first to last, are in direct and palpable antagonism with what the supreme court of Louisiana has said and done in the matter. This latter court has annulled the attempted in-

solvent proceedings of the corporation from the beginning to the end; motions, rules, orders, judgments, in the case of the Bellville Iron-Works Co. *vs.* Their Creditors have been stricken with nullity, and the form of a suit still exists in the Fourth district court without any, the slightest substance. *Quod nullum est, nullum producit effectum.* The complainants proceed exactly as if they existed in full force and virtue, and the decree appealed from sustains their pretensions. Effect has been given to the decree of the lower court, whilst the judgments of reversal by the appellate court are wholly ignored.

Over the original cause of action, as presented in the bill, the circuit court is *ratione personarum* entirely without jurisdiction. Whether Sumner *et al.* have or have not a claim for rent and privilege for its payment against the Belleville Company cannot be determined by a circuit court of the United States, and *á fortiori*, is the circuit court unable to reach this result when, between the same parties, the highest court of the State has decided that no such privilege exists, and that the right of the appellants to seize money and effects in the hands of the mock syndic or other garnishees exists just as if no proceedings were ever had in the surrender.

We may admit, *a. g.*, not only that the complainants were creditors of the iron-works company with landlord's privilege, but also that if the money, the proceeds of the movables originally pledged for the rent, was ever *in custodiam legis*, the complainants would be entitled to recover. But this condition of things is exactly that which the Supreme Court decides never existed. The whole proceedings of the surrender have been decreed void—*coram non judice.* Everything done in that suit must be, in law, considered as not done. *Res judicata pro veritate accipitur.* The selling of the movable property of the corporation must be

considered, then, the act of the corporation, not the act of the law. The money, the proceeds of the sale, is, in law, still the property and in the possession and under the control of the company, and liable to the seizure and garnishment of these appellants. There can be no question of any landlord's privilege or lien in the case. The goods were removed from the premises. This lost the complainants their privilege. (Louis'a Code, 2,679.) The landlord must seize the goods "within fifteen days after they are taken away."

Farnet *et al. vs.* Their Creditors, 8 An., 372.

In the present case, the landlords have done nothing judicially as actors, from the institution of Jeffries' first suit, 10th December, 1858, to the filing of this bill in equity, 23d February, 1867. How, then, can their privilege as landlords upon the movables of the corporation be recognized?

The complainants allege in their bill that they are judgment creditors of the Belleville Iron Company, but this is shown to be an error. They are really suing here the company for the amount of their rent *in an original action.* The corporation is a citizen of Louisiana, where it was created, (13 Wall., 283,) and manifestly cannot be sued in a circuit court of Louisiana by citizens of that State. Even if the complainants had had a just claim on the Company and a privilege to secure it, how can they begin a suit in the national court to enforce the privilege, *which is the accessory,* when their right to sue for their claim, *which is the principal,* is expressly prohibited?

Holdane & Co. garnisheed the Bank of America by process from the circuit court of the United States on 21st November, 1859. From this date, the fund may be considered as *in custodium legis,* if the insolvent proceedings were null in the fourth district court of New Orleans.

Whilst the proceedings to declare them null were pending, the lessors were made parties to Holdane's suit, and defended against them on the ground that the insolvent proceedings were valid, and that the orders and judgment of the fourth district court of New Orleans must stand till reversed. They still maintain this position in their present bill.

But far from this being the case, the contrary has been definitively decided by the supreme court of Louisiana in the cases found in the record.

By the terms of the lease from Valette, Hughes, and others, to Cooke and others, (Rec., pp. 4 to 8,) transferred to the Belleville Iron-Works Company, with an assumption by the latter of all the rights and obligations of the first lessees, it is covenanted and agreed that the complainants should share in the profits of the business, which, we submit, constituted them partners.

See Rec., p. 5, foot.

3 Kent's Com., p. *25 and notes.

Champion *vs.* Bostwick, 18 Wendell, pp. 184–'5.

Gow on Partnership, pp. 14, 15.

Having constituted themselves partners of the Belleville Iron-Works Company, the complainants cannot be allowed to shift their position, and claim a privilege as landlords adverse to the interest of creditors.

Respectfully submitted.

THOMAS J. DURANT,
Of Counsel of Appellants.

Supreme Court of the United States.

DECEMBER TERM, 1872.—No. 218.

HOLDANE & CO. AND JAMES JEFFRIES, *Appellants*,
Against
R. B. SUMNER AND OTHERS, *Appellees*.

Appeal from Circuit Court of U. S. for District of Louisiana.

STATEMENT OF THE CASE.

CONWAY ROBINSON,
Counsel for Appellees.

H. Polkinhorn & Co., Printers.

Supreme Court of the United States.

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HOLDANE & Co. AND JAMES JEFFRIES, *Appellants*, Against R. B. SUMNER AND OTHERS, *Appellees*. } Appeal from Circuit Court of U. S. for District of Louisiana.

STATEMENT OF THE CASE.

The claim of the appellees arises from the lease of the 12th of June, 1856,* to Cook & Fallon, (p. 4 to 8 and p. 162 to 165,) and the transfer of the 1st of April, 1857, from Cook & Fallon, to the Belleville Iron Works Co., (p. 8 to 10 and pp. 72, 73;) an association which, under an act of the 14th of March, 1855, was formed into a body corporate the 9th of March, 1857, (p. 166 to 168.) As to this company, there is evidence in other parts of the record, of proceedings in February, 1857, p. 169; May, 1857, p. 79; October, 1857, p. 83 to 88; November, 1857, p. 82; and of its assets and condition in October, 1857, p. 58, 88, and 120; December, 1857, p. 74; July, 1858, p. 78; December, 1858, p. 82, 116 to 121, and p. 127 to 133; a condition which, (under Code Art. 2166 to 2180, and Revised Statutes, p. 251,) induced the petition, pp. 115, 116, and p. 126; and the cession for creditors, p. 116 and p. 133, which was followed by the order of January 4, 1859, (p. 116 and 120,) appointing Richard

*Subsequent to the instrument, p. 69 to 71.

Wells provisional syndic, and by other proceedings, p. 133, *et seq.*

The appellees having claimed as privileged creditors, (p. 138 and p. 139,) and the movable property having, under orders of February 24, 1859, and March 5, 1859, (pp. 140, 141,) been appraised and sold, (p. 142 to 148,) the syndic filed the petition, p. 148, on which the court made the order of May 19, 1859, p. 149, authorizing him to pay the amount of rent due. A provisional tableau of distribution was filed May 23, 1859, (p. 149 to 153,) to which there was opposition by Arthur Cook and others, (p. 153 to 156,) and by the appellees; the latter showing "that they are the owners and lessors of the property lately occupied by the said insolvents; that they have the lessor's privilege on the proceeds of all the movables surrendered by the insolvents, found on the property leased; that their said privilege is superior to all other privilege claims set forth in said tableau, even to law charges." (pp. 156, 157.) After notice of the tableau, (pp. 156, 157,) the same was approved June 4, 1859, so far as not opposed. (p. 157.) On a trial, in December, 1859, of the oppositions, Tillotson's opposition, "so far as the claim for rent is concerned," was discontinued, (p. 158.) The counsel for Holdane & Co. moved to dismiss their opposition, and it was so ordered December 16, 1859. (pp. 160, 161, I85.) On the trial of the opposition of others evidence was given "that all of the property which has been sold by the sheriff, and the proceeds of which are to be distributed as per tableau filed, consisted of movable property which was on the premises occupied by the Belleville Iron Co., and remained there until sold by the sheriff on the premises." (p. 161.) The court then (December 16, 1859,) took the matter under consideration. (p. 161.) As to the lease, there was a meeting of creditors, November 24, 1859, to determine

the most advantageous disposition to be made thereof, (pp. 157, 158, 159, 160,) a petition January 9, 1861, for the sale of the lease and of any movables remaining unsold, (pp. 169, 170,) an order for such sale, a petition to suspend it and an order accordingly January 30, 1860, (pp. 170, 171.) After which there was a discontinuance of the opposition of Cook and others, (p. 171,) and of the opposition of Sumner and others. (p. 171.) Then on a suggestion, that by the tableau of distribution duly homologated by the judgment of the court, the appellees, as owners of the Belleville Iron Works, were recognized and admitted as privilege creditors for the rent of said works at the rate of $7,500 *per annum*, payable quarterly, and that three installments of said rent or three quarterly payments, amounting to $5,625, were past due and payable; and after a rule to show cause against it, the court, on the 15th of February, 1860, ordered the syndic to pay over to the appellees that sum of $5,625. (pp. 171, 172.) Furthermore, after a rule to show cause the court ordered the syndic to proceed to sell the lease on the terms and conditions fixed by the creditors at their meeting in November, (p. 172;) and the sheriff made the return, pp. 76, 77.

As may be inferred from what has already been said, the appellants had no other claim than as general creditors of the Belleville Iron Works Company. On p. 15, *et seq.*, are the proceedings in two actions brought in the Circuit Court of the U. S., by *Holdane & Co.*, one commenced January 29, 1859, (p. 15,) in which there was judgment against the company May 11, 1859, (p. 20,) the other commenced April 13, 1859, (p. 37,) in each of which there was judgment against the company, May 11, 1859, (p. 39,) and steps taken to subject money and effects of the company in the hands of garnishees. There were two actions by the other appellant, Jeffries, in the

District Court of New Orleans, one commenced on the 10th of December, 1858, (p. 106,) and the other on the 18th of January, 1859, (p. 52 and p. 111,) in which actions there were proceedings as set forth, p. 53 to 75 and p. 106 to 115. On an appeal the Supreme Court of Louisiana, on the 23d of January, 1860, pronounced the opinion, p. 122 to 125, that the corporation could not avail itself of the act of March 14, 1855, sec. 15, A. 19, relative to the voluntary surrender of property. After which, to wit, on the 23d ot March, 1860, the court below decreed that the order of the 29th of December, 1858, in the case of the Belleville Iron Works Co., against its creditors, staying all judicial proceedings against the property of said company, be vacated and annulled, and, thereupon, judgment was entered for the plaintiff, Jeffries, against the company for $3,262.86, and $16.31 exchange, and $3 cost of protest, with interest from the 31st of December, 1858, till paid and costs, (pp. 89, 90,) on which execution issued (p. 91) and proceedings followed against persons as garnishees on which there were interrogatories and answers. It will be seen on p. 98 that Wm. G. Hewes, President of the Bank of America, answered thus: "The Bank of America has in its hands deposited to the credit of R. Wells, syndic of the Belleville Iron Works Company, the sum of $11,867.07, but of this amount $11,000 has already been garnisheed in the hands of the said bank by order of the United States Circuit Court Eastern District of Louisiana, in the case of Holdane & Co. v. Belleville Iron Works Co." On page 100 is this answer of A. Converse, "On the 10th March, 1860, the lease of the property occupied by the said company for the unexpired term thereof, ending on the 31st of December, 1865, was sold at public auction by the sheriff, under the order of this court, and adjudicated to me at the rate of $1,000 *per annum*, payable quarterly at the

periods fixed by the original lease, say on the 1st of January, April, July, and October, of each and every year. Nothing has yet been paid on account of the rent accruing under said purchase." On the 18th of June, 1860, there was a rule on R. Wells, the Bank of America and A. Converse, to show cause why judgment should not be rendered against them for the amount of the judgment of Jeffries against the company. (p. 101.) There was also a rule on R. B. Sumner and his co-lessors. (pp. 101, 102.) Upon the exception filed by defendants in the rule the court, on the 23d of June, 1860, rendered a judgment, whereby said rule was dismissed without a trialon the merits. (pp. 102, 103.)

In the case or cases of Holdane & Co., in the Circuit Court of the United States, Judge *Campbell*, in November, 1860, pronounced the opinion p. 33 to 35.

On the 30th of January, 1863, R. Wells, syndic of the estate of the Belleville Iron Works Co., drew a check payable to the order of R. B. Sumner, for $11,867,07, with interest, which check was protested because, as it was said, the amount had been garnisheed; to which answer and protest, Sumner protested (pp. 11, 12).

On the appeal from the judgment of the 23d June, 1860, (whereby on exception the rule was dismissed,) the Supreme Court, in December, 1866, having before it nothing but that judgment and the exception, reversed that judgment, overruled the exception and remanded the case. The Supreme Court was of opinion that the judgment rendered on the 23d of March, 1860, annulled in all its parts the order of December 29, 1858, "and allowed the creditors to proceed as if there had been no surrender." It considered, "that the judgment homologating tableau of distribution was not binding on plaintiff, so as to prevent him from seizing money and

effects yet in the hands of the so-called syndic or other garnishees, such money and effects being considered as the property of said company after setting aside the surrender." *Jeffries* v. *Belleville Iron Works Co.*, in 18 Louis. Ann., 688, 691, and in the record p. 196 to 201. After this decision the only further proceeding by Jeffries, was by intervention on the 14th of February, 1867, in the cases of Holdane & Co., (36.)

Before this intervention had been discontinued (p. 371,) to wit; on the 23d of February, 1867, the bill whereon there was rendered the decree now appealed from, was filed by the appellees against the appellants, and the Bank of America. After setting forth the lease of the 12th of June, 1856, the transfer of the 1st of April, 1857, and the acceptance by the lessors of the Belleville Iron Works Co., as their lessees, the bill states the insolvency of that company, the cession of their property and effects to their creditors and the proceedings on such cession, especially the sale by the sheriff under the order of court of the effects and movables on the leased premises, which "netted something above the sum of $47,000." Then the bill mentions the provisional tableau of distribution filed the 23d of May, 1859, whereby after certain law charges and expenses, the balance of the proceeds of the effects and movables found on the premises was allowed (pp. 150, 151,) to the complainants on account of the rent of said premises by way of privilege and lien as lessor, and states that the sum of $11,867, on deposit in the Bank of America, to the credit of Richard Wells, syndic, sought to be subjected to the payment of the judgments of Holdane & Co., and of Jeffries, is a part of the proceeds of the movables and effects found on said premises and sold by the sheriff; that said proceeds were allowed to the complainants by the provisional tableaux; that said tableaux was on the 4th of June,

1859, homologated so far as not opposed; (p. 157) and although some oppositions were filed by Holdane & Co., among others the same were soon dismissed, (pp. 160, 161, also p. 158, and 171,) and said judgment of homologation became final and absolute (pp. 171, 172,) and is a conclusive judgment, having the force of *res judicata* against said Belleville Iron Works Co., and in favor of the complainants against all persons parties thereto; that said effects and movables of the proceeds of which said sum of $11,867, forms part, never left the premises until sold by the sheriff, and said balance passed into the hands of the officers of the District Court, and has there remained in the custody of the law, and belongs to the complainants by virtue of their privilege as lessors and the orders and judgment of said District Court. The bill, after stating the large sum due the complainants for rent, mentions the check of the 30th of January, 1863, (drawn by Wells in pursuance of the orders and decrees of the District Court and in recognition of complainants' rights) and the protest of said check, and shows that notwithstanding the right of complainants to said sum of $11,867,07, the defendants, Holdane & Co., and James Jeffries, are seeking to subject the same to the payment of their judgments against the Belleville Iron Works Co. Wherefore the bill prays, among other things, that it be decreed that the Bank of America pay over said fund to the complainants with cost of suit, and that they may have such further aid, relief and remedy as to the Court may seem meet and proper, and the nature of the case may require.

By Holdane & Co., there is a plea of prescription p. 12, and what is called an amended plea p. 13. These pleas being overruled (p. 179) the Holdanes and Jeffries filed the answer p. 178 to 182, to which there is a replication, p. 182.

After a rule to show cause, it was ordered that the amount on deposit in the Bank of America, viz: $11,867,07, be invested in five-twenty gold interest bearing bonds of the United States, and that said bonds be made a special deposit in bank to abide the final decree, (pp. 183, 184, and 202-3.)

The cause having been heard before Mr. Justice *Bradley*, in the Circuit Court, that Court, on the 14th of June, 1871, made the decree, p. 202, from which there is an appeal.

Brief of the argument.

I. Not only was the opposition of Holdane & Co., dismissed December 16, 1859, on their special motion, (pp. 160, 161,) but it was again discontinued on the 10th February, 1860, on the motion of their counsel (p. 171.) For the only opposition which they had made was that in the name of Arthur Cook & others, (p. 151,) which it will be seen embraced Holdane & Co., as creditors for $4,288.43, and when that opposition was called for trial and the court had heard pleadings and counsel, it was "on motion of opponent's counsel," ordered "that the opposition of Cook & others be discontinued," (p. 171;) and then the appellees, discontinuing their opposition to to the tableau on p. 151, payment was directed according thereto. Though Jeffries proceeded as if there had been no cession by the insolvents, yet he could not by any proceeding of his impair the right which the lessors had on the movables which were on the leased premises at the time of that cession.

II. The civil code of Louisiana thus defines the lessor's right of pledge.

Art. 3185. The right which the lessor has over the products of the estate and on the movables which are found on the place leased for his rent, is of a higher nature than mere privilege. The latter is only enforced on the price arising from the sale of movables to which it applies. It does not enable the creditor to take or keep the effects themselves specially. The lessor on the contrary may take the effects themselves, and retain them until he is paid.

Art. 3186. The privilege of the lessor is enforced on the property subject to it, in the manner described in the title of *lease* or *hiring*.

The manner described in that title is as follows:

Art. 2675. The lessor has, for the payment of his rent and other obligations of the lease, a right of pledge on the movable effects of the lessee, which are found on the property leased. In the case of predial estates, this right embraces everything that serves for the labors of the farm, the furniture of the lessee's house, and the fruits produced during the lease of the land; and in the case of houses and other edifices, it includes the furniture of the lessee, and the merchandise contained in the house or apartment, if it be a store or a shop.

Art. 2676. This right includes not only the effects of the principal lessee or tenant but those of the under tenant, as far as the latter is indebted to the principal lessee, at the time when the proprietor chooses to exercise his right.

A payment made in anticipation, by the under-tenant to his principal, does not release him from the owner's claim.

Art. 2677. This right of pledge affects not only the movables of the lessee and under-lessee but also those belonging to third persons when their goods are contained in the house or store by their own consent, express or implied.

Art. 2678. Movables are not subject to this right when they are only transiently or accidentally in the house, store or shop, such as the baggage of a traveller in an inn, merchandise sent to a workman to be made up or repaired, and effects lodged in the store of an auctioneer to be sold.

Art. 2679. In the exercise of this right the lessor may seize the objects which are subject to it before the lessee takes them away or within fifteen days after they are taken away, if they continue to be the property of the lessee and can be identified.

According to the judicial exposition of these articles the claim of the lessors is for no more than is embraced

in their privilege. *Dorsey* v. *Vidal*, 1 Mart. N. S. 718; *Sterrett* v. *Smith*, 2 Id., 450; *Parker* v. *Starkweather*, 7 Id., 337; *Reynolds* v. *Swain*, *&c.*, 13 Louis. 198; *Vairin & Co.* v. *Hunt*, *&c.*, 18 Id., 498; *Deslix* v. *Jone.* 6 Rob., 292; *Twitty* v. *Clarke*, 14 Louis. Ann., 503; *Simon*, *&c.* v. *Goldenberg*, 15 Id., 229. In 1850, referring to article 2675 of the civil code, the Supreme Court of Louisiana said: "The language is general and cannot be restricted to rent due. The right to levy a provisional seizure even before the rent be due, is given by the statute of 1839 to the lessor who has reason to believe that his tenant is about to remove his property. We do not consider this statute as creating the privilege but providing a conservative remedy for its enforcement." *Robinson* v. *Staples*, 5 Louis. Ann., 712. The appellants being not mortgage creditors of the insolvent but mere ordinary creditors have no right, as such, to dispute the application to the rent of the goods—or the proceeds of the goods—which were on the premises at the time of the cession. *Miller*, *&c.*, v. *Michoud*, *&c.*, 11 Rob., 230. But the proceeds are to be applied to pay the appellees who were prevented from seizing, by the order (p. 116,) for a stay of proceedings. *Paulding*, *&c.* v. *Ketty*, *&c.*, 9 Mart. O. S., 187; *Robinson* v. *McCoy*, 8 Mart. N. S. 107; *Denistoun* v. *Malard*, 2 Louis. Ann., 14; *Robinson* v. *Staples*, 5 Id., 712. This rule, while it is sustained by decisions in Louisiana also accords with principles of equity, maintained in this court and elsewhere. *Oliver*, *&c.* v. *Piatt*, 3 How., 401; *Overseers of Poor* v. *Bank of Va.*, *&c.*, 2 Grat., 548.

III. The stipulations in the lease of the 12th of June, 1856, do not constitute such a partnership as the other side (p. 178.) contended for. *Cox* v. *Hickman*, 8 Ho., of L. 268; S. C., (*Wheatcroft & Cox* v. *Hickman*,) 9 Com., B. (J. Scott,) N. S., 47, 99 Eng., C. L.

IV. Both pleas were properly overruled. The appellees being guilty of no laches, their claim is not affected by any prescription; not by that of three years in Art., 3503, relied on in the plea p. 12, *Paulding*, *&c.*, v. *Ketty*, *&c.*, 9 Mart., O. S., 187, and other cases before cited; nor by that of five years in Art., 3505, even if this could be regarded as an action on the check drawn by Wells, January 30th, 1863. Still less can the claim of the appellees be affected by the prescription of ten years in art., 3508.

V. The District Court of New Orleans by its decree of March 23d, 1860, (pp. 89,90,) having adjudged that its order of the 29th of December, 1858, staying all judicial proceedings against the property of the Belleville Iron Works Company be vacated and annulled, there were besides the proceedings on the petition of that company other proceedings in courts of law, to wit: in that District Court by Jeffries, and in the Circuit Court of the United states by Holdane & Co, So that there were three different proceedings as to the fund now in question; and there could not in either of those proceedings, be an order disposing of the fund with a right of appeal by any of the parties interested. Hence there was filed a bill in equity setting forth the merits of the respective claims, as suggested in the opinion of this court in *Bayard* v. *Lombard*, *&c.*, 9 How., 551; and making parties all who are interested in the object of the suit. Here there is no room for the question of jurisdiction. For even if Holdane & Co., had been citizens of the same State with the plaintiffs, there would have been jurisdiction to stay their proceedings *Logan* v. *Patrick*, 5 Cranch., 288; *Dunn*, *&c.* v. *Clarke*, *&c.*, 8 Peters, 1. And Jeffries intervened in that suit of Holdane & Co., p. 36. But here the parties are citizens of differ-

ent States; and the court had on this and the other ground rightful authority to proceed to a final determination of the controversy. *Clarke* v. *Mathewson, &c.*, 12 Peters, 171. The power of the court is not limited to a case between the parties to the original suit. Any party whose interests are affected by the suit at law, may file the bill when a court of law would have difficulty in dealing with the subject with a proper regard to the rights of all concerned, *Pennock, &c.*, v. *Coe*, 23 How., 117; *Gue* v. *Tide Water Canal Co.*, 24 How., 257; *Freemon* v. *Howe &c.*, Id., 460. This is quite consistent with *Buck* v. *Colbath*, 3 Wallace, 345; and *Watson* v. *Jones*, 13 Id., 719. The decree on p. 202, was properly made under the prayer of the bill that the Bank of America be decreed to pay over the fund to the complainants with costs of suit, and that they may have such further aid, relief and remedy as to the court may seem meet and the nature of the case may require.

CONWAY ROBINSON,
Counsel for Appellees.

April, 1873.

1 Peters 306

7 Peters 263

Record p. 116

" " 136-139

133 160

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